

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS JACKSON,
Plaintiff,

v.
SERGEANT E. PAGAN,
Defendant.

ORDER

20 CV 5176 (VB)

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti

On November 17, 2020, the Court received a motion from plaintiff seeking the entry of default judgment against defendant. (Doc. #17).

Plaintiff's motion is DENIED with prejudice. Defendant was served with summons and notice of the complaint by mail on September 11, 2020. (See Doc. #10). As set forth on the notice of service, pursuant to a local standing order, defendant had 60 days from the date he or his agent mailed or delivered a completed acknowledgment of receipt of service to file and serve an answer or other responsive pleading. According to the Acknowledgment of Receipt of Summons and Complaint, (Doc. #10), defendant's attorney acknowledged service on September 11, 2020. Defendant therefore had until November 11, 2020 to file an answer or other responsive pleading.

Defendant timely filed an answer to the complaint on November 10, 2020. (Doc. #15). Defendant also docketed proof of service on plaintiff by mail. (Doc. #15-1). Because the Court recognizes plaintiff may not have received a copy of defendant's answer, the Court has attached a copy of the answer to this Order, which will be mailed to plaintiff at the address on the docket.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

The Clerk is instructed to terminate the motion (Doc. #17).

Dated: November 18, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOMAS JACKSON, :
: Plaintiff, : 20-cv-5176(VB)
- against - :
: ANSWER
SERGEANT E. PAGAN, suing individual and in :
their official capacities, :
: Defendants. :
----- X

Defendant Lieutenant, s/h/a Sergeant, Edgar Pagan (“Defendant”) hereby answers the Complaint, filed July 2, 2020 (the “Complaint”), by Plaintiff Thomas Jackson (“Plaintiff”) as follows:

1. Defendant denies the allegation in Section I on Page 2 of the Complaint.¹
2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in Section II on Page 2 of the Complaint.
3. Defendant admits the allegation in Section III on Page 2 of the Complaint that Plaintiff is a convicted and sentenced prisoner.
4. Defendant admits the allegation in Section IV on Page 3 of the Complaint to the extent that he was a Sergeant at Sing Sing Correctional Facility at times relevant to the allegations.
5. Section V on Pages 4-5 of the Complaint contains legal conclusions as to which no response is required. To the extent that Section V contains factual allegations to which a response is required, Defendant denies the allegations except admits that he issued Plaintiff an Inmate

¹ Reference to the Complaint is made to pages as they appear on the ECF Docket (Dkt. No. 2), which are numbered in the order of the filing. Where possible, reference is also made to section headings identified on those pages.

Misbehavior Report on or about June 29, 2017 that charged Plaintiff with the following inmate rule violations: 100.10 (assault on inmate), 104.11 (violent conduct), 104.13 (creating a disturbance), 109.10 (out of place), and 113.10 (weapon).

6. Defendant denies that Plaintiff is entitled to any of the relief prayed for in Section VI on Page 5 of the Complaint and denies any wrongdoing.

7. Defendant denies any remaining allegations in the Complaint.

DEFENSES

First Defense

8. Plaintiff has failed to state a claim or allege sufficient facts upon which relief can be granted.

Second Defense

9. The Eleventh Amendment bars Plaintiff's claims for damages against Defendant to the extent brought against him in his official capacities.

Third Defense

10. Defendant is entitled to qualified immunity for the claims asserted herein in that his conduct did not violate clearly established law or it was objectively reasonable for him to believe that his conduct did not violate clearly established law.

Fourth Defense

11. Plaintiff's claims may be barred in whole, or in part, by the doctrines of res judicata and collateral estoppel.

Fifth Defense

12. Plaintiff's claims are barred by Plaintiff's failure to exhaust his administrative remedies.

Sixth Defense

13. Plaintiff's conduct caused or contributed to, in whole or in part, his injuries and/or damages.

Seventh Defense

14. Any state law claims, to the extent raised herein, are barred by New York Correction Law § 24.

JURY DEMAND

15. Defendant demands a trial by jury.

CONCLUSION

WHEREFORE, Defendant demands judgment dismissing the Complaint with prejudice, awarding him the costs of this action, and granting such other and further relief as the Court deems just and appropriate.

Dated: Westchester County, NY
November 10, 2020

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for Defendant

By: /s/ Deanna L. Collins
Deanna L. Collins
Assistant Attorney General
28 Liberty Street - 18th Floor
New York, NY 10005
(212) 416-8906
deanna.collins@ag.ny.gov

Copy mailed to:

Thomas Jackson (*pro se*)
DIN 12-A-3039

Upstate Facility
P.O. Box 2000
Malone, NY 12953

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOMAS JACKSON, :
: :
Plaintiff, : 20-cv-5176 (VB)
- against - :
: : **DECLARATION OF SERVICE**
SERGEANT E. PAGAN, suing individually and in :
their official capacities :
: :
Defendants. :
----- X

DEANNA L. COLLINS, an attorney duly admitted to practice in New York State and this Court, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

On November 10, 2020, I served Defendant's Answer upon:

Thomas Jackson
DIN 12-A-3039
Upstate Correctional Facility
P.O. Box 2000
Malone, NY 12953

by depositing a true and correct copy thereof, properly enclosed in a pre-paid wrapper, in a post-office box regularly maintained by the government of the United States, directed to the *pro se* plaintiff at the address within the State designated by him for that purpose.

/s Deanna L. Collins
Deanna L. Collins

Executed: Westchester County, NY
November 10, 2020